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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

13 Cr. 271 (LTS)

6 RAHJOHN LEARY,

7 Defendant.

Sentence

8 -----x
9 New York, N.Y.
10 November 19, 2015
11 2:30 p.m.

12 Before:

13 HON. LAURA TAYLOR SWAIN,

14 District Judge

15 APPEARANCES

16 PREET BHARARA
17 United States Attorney for the
18 Southern District of New York
19 JUSTINA L. GERACI
20 Assistant United States Attorney

21 JOYCE C. LONDON
22 JAMES BELL
23 Attorneys for Defendant

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1 (Case called)

2 MS. GERACI: Good afternoon, your Honor. Justina
3 Geraci, for the government, and I'm joined at counsel table by
4 Paterson Police Det. Steven Santee.

5 THE COURT: Good afternoon, Ms. Geraci and Det.
6 Santee.

7 MR. BELL: For Mr. Leary, James Bell. Judge, good
8 afternoon. I'm here with Ms. London.

9 THE COURT: Good afternoon, Mr. Bell.

10 Good afternoon, Mr. Leary.

11 Good afternoon, Ms. London.

12 Good afternoon as well to the family members, victims,
13 and other spectators who are here in court today. Thank you
14 all for coming.

15 We are here today for sentencing. I have received and
16 reviewed the presentence investigation report, which is dated
17 October 1, 2015, including the recommendation and addendum, as
18 well as the defense submission dated November 10, 2015, which
19 was accompanied by 16 letters in support of Mr. Leary,
20 including letters from his mother, grandmother, brother,
21 several other relatives, and the mother of his child, as well
22 as a letter from Mr. Leary himself, and a certificate of his
23 participation in the Bureau of Prisons recreational basketball
24 league.

25 I've also received the government's November 13, 2015,

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1 submission and an additional letter from defense counsel dated
2 November 17, 2015, which was accompanied by a certificate
3 earned by Mr. Leary from the MDC education department. This
4 morning, the government provided the Court with a letter from
5 the grandmother of the man who was shot and killed in the 2010
6 incident for which Mr. Leary is being prosecuted in New Jersey.

7 Are there any other written submissions that the
8 parties intend me to have considered in connection with the
9 sentencing?

10 MS. GERACI: I don't believe so, your Honor.

11 MR. BELL: No, Judge.

12 THE COURT: And I note that the defense has made
13 certain very limited redactions in the publicly filed version
14 of its submission. I approve those redactions which are
15 consistent with the rules that apply in federal court, and so
16 the original submission will be filed under seal.

17 Mr. Bell, have you read the presentence report and
18 discussed it with Mr. Leary?

19 MR. BELL: Yes, ma'am, I have.

20 THE COURT: Mr. Leary, have you yourself reviewed the
21 presentence report?

22 THE DEFENDANT: Yes.

23 THE COURT: And have you discussed it with your
24 attorneys?

25 THE DEFENDANT: Yes.

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1 THE COURT: Mr. Bell, do you have any objections or
2 other issues with respect to the content of the report that you
3 wish to address at this time?

4 MR. BELL: I do not, Judge.

5 THE COURT: Thank you.

6 Ms. Geraci, does the government have any objections or
7 other issues with respect to the content of the report?

8 MS. GERACI: Your Honor, the only issue was addressed
9 on page 4 of the government's submission, just noting that the
10 PSR had indicated that the defendant was an associate of a set
11 of the Bloods, the 9-3 set. The government has information to
12 suggest that he is actually a member of that set.

13 THE COURT: Now, that brings me to the matters that
14 were raised in the November 17 letter from the defense, and I
15 did want to give you an opportunity to respond to those. As I
16 read the letter with respect to that gang membership issue, it
17 doesn't seem to dispute that Mr. Leary admitted that he was a
18 member of that set of the Bloods, but it does dispute his
19 reason for requesting certain housing in his previous
20 incarceration. Does the government take issue with that
21 specific contention?

22 MS. GERACI: We do, your Honor. We have a signed gang
23 member identification form from the defendant that indicates
24 not only that he has acknowledged he's a member of the Bloods
25 but specifically that he is a member of the 9-3 Hillside

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1 Beehive set of the Bloods. In this identification form, which
2 I've sent to defense counsel and I'm happy to submit to the
3 Court, he also requests to be housed with other positively
4 identified Bloods gang members and admits to being a member of
5 the Bloods gang for approximately four months. It's signed and
6 dated by the defendant.

7 THE COURT: Mr. Bell, does the defense still press its
8 contention that he did not make a gang member-related housing
9 request?

10 MR. BELL: It is our position, Judge, that at the time
11 that he signed this document, he was 17 years of age and had
12 been asked other questions other than what was on this
13 document, and that based on the fact that he knew that there
14 were family members who were being held at that particular
15 facility, he wanted to be housed with them. And I believe the
16 way we understand it, in order to be housed in that particular
17 unit, he indicated that he wanted to, in order to be housed in
18 that unit, he had to sign this document indicating that he was
19 indeed a Bloods member to be housed in that unit at the time.
20 That's our position, Judge.

21 THE COURT: Thank you, Mr. Bell. Are you disputing
22 that Mr. Leary was a self-acknowledged member of the Bloods?

23 MR. BELL: You're asking me, Judge?

24 THE COURT: Mr. Bell, are you disputing that?

25 MR. BELL: I'm sorry. I'm not disputing that he

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1 signed the form and acknowledges on the form that he is a
2 member of the Bloods. I'm not disputing that.

3 THE COURT: Are you claiming that the information he
4 put on the form was not truthful?

5 MR. BELL: Not that it's not truthful, Judge. I just
6 don't believe that the docket further indicates that there was
7 another reason for him wanting to be housed, which is to be
8 with family members who were also in that facility.

9 THE COURT: So an additional reason rather than a
10 reason that's necessarily contrary to the information in the
11 form.

12 MR. BELL: One second.

13 (Pause)

14 MR. BELL: Well, I would add, though, Judge, that he
15 was told at the time that he could not be housed in that
16 particular area unless he signed. I'll leave it at that.

17 THE COURT: Thank you.

18 Ms. Geraci.

19 MS. GERACI: Your Honor, I'd just further note that he
20 admitted to being a member in his postarrest statements to law
21 enforcement of the 230 boys, which is a feeder for the 9-3 set,
22 and cooperators in fact have told us that Mr. Leary frequently
23 associates himself both with the original feeder group and with
24 the 9-3. So we have other information aside from the form,
25 which seemed to be a very clear piece of information, that he

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1 is more than just an affiliate of this set.

2 THE COURT: Thank you. It does seem to me that the
3 government's representations, including representations as to
4 corroborative evidence and Mr. Leary's own statements, are
5 indicative of his membership in the Bloods.

6 Ms. Geraci, is the government applying to have
7 Mr. Leary credited with the third point for acceptance of
8 responsibility?

9 MS. GERACI: Yes, your Honor.

10 THE COURT: That application is granted and it is
11 already reflected in the presentence report computations.

12 What is the government's position as to forfeiture?

13 MS. GERACI: The government is not seeking forfeiture
14 with respect to Mr. Leary.

15 THE COURT: Very well then. Since there's no
16 information from which I could properly formulate a forfeiture
17 obligation, there will be no forfeiture obligation imposed.

18 What is the status of the New Jersey case?

19 MS. GERACI: Your Honor, I've spoken to the prosecutor
20 in that case. My understanding, and I have a copy of a writ
21 here, is that Mr. Leary is set for sentencing on December 3.
22 Just one moment; I want to check that date, your Honor.

23 Yes. I'm sorry, your Honor. It should be December 3.
24 He is scheduled per this writ to appear in court for
25 sentencing. He has already pled guilty, and I believe that

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1 date is in my submission, sometime in April, in connection with
2 that case.

3 THE COURT: Thank you.

4 I'm now ready to hear from counsel further on
5 sentencing issues. Mr. Bell.

6 MR. BELL: Thank you, Judge. I would indicate this.

7 As you know, my client, our client, has already pled guilty and
8 fully has accepted responsibility in this matter. I note that
9 very early on in our discussions with Mr. Leary, he indicated
10 to us that it was always his intention to take a plea in this
11 matter and to try to move forward with the plea as quickly as
12 possible. The government and Ms. London and I have had
13 multiple conversations in an attempt to try to get a much
14 earlier plea date. The government, of course, was conducting
15 their further investigation, which led to some delay in our
16 ability to get here. It is our, of course, anticipation that
17 if we were to get here earlier, maybe Mr. Leary would not have
18 had the additional point and may have been in category I, which
19 instead of a sentencing range of 97 to 121 would be at a
20 sentencing range of 87 to 108.

21 I bring that to the Court's attention because it bears
22 upon my client's mind-set of wanting to accept responsibility
23 and move forward with the resolution of this matter and try at
24 some point, at the nearest point, to move forward with his
25 life. I will, of course, note the presence of the letter that

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1 the government presented to the Court from the grandmother of
2 the deceased in the New Jersey case. Of course, all of our
3 hearts go out to her, and there's no one here in this courtroom
4 other than, I would say, my client's grandmother who
5 understands the loss of a grandchild. My client's grandmother
6 lost herself two individuals to the streets of Paterson.

7 I know the government in this matter argues that my
8 client was the epicenter of the drugs and the violence that
9 occurred in Paterson. I would submit to the Court that the
10 violence and drugs that went on in the streets of Paterson have
11 been going on for a much longer period of time than my client
12 has been alive. He himself got consumed along with many others
13 who live in that community and have unfortunately either
14 participated or have themselves been the victim either of the
15 drugs and/or the violence that occurred on the streets.

16 My client, first, at a very young age, did very well
17 in high school. He did well academically. He did well both in
18 sports, basketball and football. And he was someone that had a
19 very bright future. Circumstances that came along brought him
20 to this point. He's made, of course, many, many judgment
21 errors and bad decisions that bring him here, and he's someone
22 who will be the first to tell you that he's not suggesting that
23 he is alone, that he accepts that his decisions are not
24 necessarily just a product of where he lived. He himself knows
25 that there are decisions that he should have made that would

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1 not have brought him to this place, but I will suggest to the
2 Court, though, that as we indicated in our sentencing
3 memorandum, a 60-month sentence would be appropriate and
4 sufficient in this particular matter.

5 I understand that the Court may believe because of the
6 violence that my client has either been involved with or
7 alleged to have conducted himself in that that may not be
8 enough time. However, I would suggest to the Court that there
9 are reasons to be optimistic for the future of this young man.
10 One is the fact that we have so many people here in support of
11 him; not only his grandmother, not only his mother, but his
12 young daughter, the mother of his child, and also his brother,
13 who have been in this building on every occasion that this case
14 has been heard. They go on every occasion to visit him at the
15 MDC, so there is a network of people, as indicated by the
16 letters, the 16 letters, that the Court received. There's a
17 network of people who are there to support him when he
18 eventually is released, and eventually he will be.

19 And because he understands that he eventually will be
20 released, he himself has started to prepare himself for that
21 day. One of the things that Ms. London and I have talked about
22 that is very encouraging is the fact that he's taken the time
23 to start taking the GED program. Ms. London has told me in her
24 20-plus years of practice in this building, the number of
25 people who have on their own initiative gone out to prepare

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1 themselves and have taken the GED is very, very small. I think
2 she may have had only one or two prior clients who have done
3 that on their own, because as the Court knows, there is no GED
4 program within MDC. The clients who choose to decide, who want
5 to take the GED program, they have to beg and borrow from old
6 book, books without pages in them. They themselves have to
7 initiate the need or the want to be better, and this is only
8 one of the many ways that these clients have to show the Court
9 that they have tried to turn a corner. And this is what he has
10 done, particularly in this case.

11 I will also note that in the letter that he wrote to
12 the Court, very well spoken, it's not a letter that we helped
13 him write. He wrote it all on his own and gave us a copy of
14 the letter, which of course we provided to the Court, a very
15 eloquent letter, a letter that speaks to his time used very
16 well while being incarcerated as a time for self-reflection and
17 who he wants to be. As the Court will note, there's a young
18 lady and young child in the courtroom. That's his young
19 daughter, and he uses her new life in this world as an
20 opportunity to see that there's a better place for his young
21 daughter, and he wants to be part of that. So in order for him
22 to be a productive member of society, to be a productive parent
23 to that young girl, he understands and now has started taking
24 the steps to turn that corner to be a much better person and a
25 law-abiding person, of course.

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1 What I submit to the Court is that there's not many
2 clients that I have met, but there's quite a few that
3 Ms. London has met, so this individual, Mr. Leary, stands out
4 to her as someone who deserves an opportunity with a sentence
5 of 60 months.

6 I would also note, too, that Mr. Leary is a much
7 different person that sits here than when I first met him. He
8 understands that the decisions that he made are severe. He
9 understands that he will sustain a severe penalty for the
10 judgments and the errors and the violations of the law that the
11 Court is here to sentence him on today, as he will be sentenced
12 in New Jersey as well. The Court there has made a
13 determination based on the evidence that they have for him what
14 a sentence should be there, and that's taken into account here
15 in the advisory guidelines which the Court has here. It's
16 taken into account, instead of criminal category I, he's now
17 criminal category II. Instead of being a level 27, he received
18 an additional point for the violence and the possession of the
19 weapon, which has been alleged in these matters. So I would
20 suggest that if the Court were inclined to give a higher
21 sentence, I would suggest to the Court that what the Court has
22 in front of her Honor is a range that already encompasses the
23 violence and/or the possession of a weapon, which I'm sure the
24 people will point out when they have an opportunity to speak to
25 your Honor.

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1 Based on that, Judge, I'm going to ask the Court to
2 consider a sentence of 60 months to run concurrently with the
3 time, and I understand that the Court has a right to run either
4 this sentence partially concurrently, totally concurrently --
5 excuse me, partly consecutive or fully consecutive or
6 concurrently. I ask the Court to allow for the sentence in
7 this matter to run concurrently with the time that he will be
8 sentenced to in the New Jersey matter.

9 Thank you for your time.

10 THE COURT: Thank you, Mr. Bell.

11 Ms. Geraci.

12 MS. GERACI: Your Honor, if I may, I just want to
13 acknowledge some family members of the victim, Nyjavar Jackson,
14 who are in court today. Obviously this is in relation to the
15 Passaic County prosecutor's case, but they did decide to come
16 today. One is Cheryl Burke. My understanding is she's sitting
17 right there, and she is the paternal grandmother of
18 Mr. Jackson. Marie Harris is Ms. Burke's sister, sitting right
19 here. Maisha Coley is Ms. Harris' daughter and Ms. Burke's
20 niece. Yusuf Blanford is Ms. Burke's grandson, and Ray White
21 is Mr. Jackson's father, and they all came to court today. I
22 did speak to them. They don't wish to address your Honor
23 beyond the letter your Honor has received.

24 THE COURT: Thank you for your letter, Ms. Burke, and
25 thank you all for being here today.

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1 MS. GERACI: Your Honor, I'll rest primarily on the
2 submission to the Court, but I just want to point out a few
3 things. As the Court's aware, this defendant is a
4 self-admitted member of the violent street gang which has
5 terrorized the city of Paterson for decades. This defendant
6 sold drugs in gang-controlled areas in Paterson, New Jersey,
7 for literally his entire adult life. His postarrest statement
8 made clear that he has been selling since he's 18 years old,
9 and really just the only time he wasn't selling was really when
10 he was arrested and in jail.

11 In this conspiracy, in the short time during which he
12 was released on bail conditions to the time he was arrested in
13 connection with this case, his sales have amounted up to a
14 kilogram of heroin, just in this charged conspiracy.

15 THE COURT: Actually, that brings me to one of the
16 other issues that was raised in Mr. Bell's letter, and I
17 neglected to ask you about that directly. The defense took
18 issue with your characterization of the current crime as a
19 return to drug selling and raised the question of whether the
20 government was seeking to impute drug-selling activity outside
21 of the particular time frame.

22 MS. GERACI: Your Honor, I'll say two things about
23 that. Within the charged conspiracy, the weight that he has
24 pled to is an appropriate weight factually for the time period
25 of 2012 through his arrest in 2014. However, it is a fact that

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1 in his postarrest statement, he told law enforcement, and I
2 have it in front of me. I have the 302 that I can pass up to
3 the Court, that he is hustling now and has been since he was 18
4 years old when he first got into the drug game. So it's the
5 government's position that he pled guilty to the charged
6 conspiracy and the weight's appropriate for that time frame.
7 However, it is accurate to say that he returned to selling
8 because, in fact, he had been selling since he was 18.

9 THE COURT: Thank you.

10 After Ms. Geraci finishes speaking, Mr. Bell, I'll
11 give you the opportunity.

12 MR. BELL: Thank you.

13 MS. GERACI: Your Honor, I think importantly for this
14 defendant, this defendant has been extremely violent, despite
15 his very young age. Information that we have in this case
16 indicates that he regularly carries firearms in connection with
17 his drug dealing and that he's been responsible for starting a
18 number of violent disputes that have erupted in the streets of
19 Paterson between rival gangs over drug territory. In fact, one
20 of the disputes that he sort of instigated is a longstanding
21 neighborhood street war that's described in our letter, and it
22 is still going on today, with back-and-forth shootings between
23 two areas of Paterson.

24 As your Honor's aware, the defendant pled guilty
25 earlier this year, in April, to aggravated manslaughter in

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1 connection with the murder of Nyjavar Jackson.

2 Going back a little bit to a notation in the defense
3 submission, the government submits the Court should be
4 skeptical of the defense characterization or assertion that
5 he's actually not involved in this murder but simply pled
6 guilty in order to resolve the case. That's not information
7 that we have, and the Court should be skeptical of that, given
8 that that case is due to be sentenced in just a few weeks. The
9 defendant did plead guilty to aggravated manslaughter in that
10 case.

11 While he was released on bail in connection with that
12 matter, he went not only back to selling drugs in the
13 Bloods-controlled areas of Paterson, but he also possessed
14 weapons, including a defaced firearm, and another firearm with
15 which he engaged in further violence. He shot an individual
16 named Kasim McCaskill four times. The government submits the
17 public needs protection from this defendant and it's why for
18 the first time in this case we are seeking a
19 top-of-the-guidelines range. We do feel that his criminal
20 history to date does not reflect his actual dangerousness to
21 the community.

22 THE COURT: Thank you.

23 Mr. Bell.

24 MR. BELL: Yes. Thank you. On the issue of the age
25 when my client supposedly started, it is our information that

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1 Mr. Leary, from a factual matter, was 17 years of age when he
2 was arrested on the New Jersey matter. He was not released
3 until he was 19 -- well, right at the end of 18. He was almost
4 19 years of age when he was released from custody on the New
5 Jersey matter. So from a factual standpoint, if the government
6 is alleging that he was dealing drugs at the age of 18, it's
7 consistent that he was not dealing drugs prior to being
8 arrested on the New Jersey matter. It was after he was
9 released from the New Jersey matter that he began dealing
10 drugs. So that was our contention, our issue with the
11 statement that he went back to dealing drugs, but we have no
12 information that prior to being arrested on the New Jersey
13 matter he was actually dealing drugs at that time.

14 THE COURT: Ms. Geraci, do you want to clarify your
15 position?

16 MS. GERACI: No. I understand now the defense
17 position. We're standing by our position that he began dealing
18 drugs at approximately age 18, and if the situation was that he
19 was not released until he was that age, that does make sense.
20 I believed he had been arrested previously. I'm sorry. I
21 believe that his arrest sort of was a bridge between the time
22 period in which he dealt drugs, but I understand what the
23 defense is saying and I don't dispute the 18-year mark as when
24 he started.

25 THE COURT: Thank you.

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1 Mr. Bell, anything further? I didn't mean to cut you
2 off. I just meant to interrupt you.

3 MR. BELL: No problem. I don't want to step out of
4 place. I understand the Court wanted me to address this one
5 issue regarding age.

6 If I could, if the Court will allow me to discuss the
7 New Jersey matter, I could rest on our submission and our
8 follow-up letter regarding the New Jersey matter and how it
9 came to be that he took a plea in that matter. As the Court is
10 fully aware --

11 THE COURT: I have read carefully the submissions and
12 listened to what has been said here today. If there is
13 something else you feel that I should hear as part of the
14 information before I make my decision, you can speak briefly.

15 MR. BELL: Judge, I'll rest on our submission and I'll
16 rest on our letters, specifically on the issue of why he took
17 the plea and under the circumstances in which the government
18 decided to move in that direction.

19 THE COURT: Thank you.

20 MR. BELL: Thank you for your time.

21 THE COURT: Mr. Leary, would you like to speak for
22 yourself before I decide your sentence?

23 THE DEFENDANT: Yes.

24 THE COURT: Please stand.

25 Mr. Bell, would you pull the microphone closer to

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1 Mr. Leary.

2 Mr. Leary, you don't have to lean into the microphone.
3 Just look at me and speak out, and I'll be able to hear you.

4 THE DEFENDANT: I'd like to apologize to the Court and
5 my family and my community for my actions. I take full
6 responsibility for what I'm in front of you for today.
7 Especially I want to apologize to my mother, my daughter, my
8 grandmother, who I shamed and embarrassed most. I would like
9 to say that through my incarceration, I really got to sit down
10 and take God in my life and change my life all the way and that
11 I'm preparing for my future whenever I leave here. If I was to
12 walk out of this courtroom today, I would make sure that you're
13 proud of me in any decision that you make that you give me,
14 your Honor. I just want to let you know that I just want to
15 get in school when I get out and into college or something or
16 trade school, whatever, so I could be there for my daughter and
17 change my life and start having a regular, normal life.

18 THE COURT: Thank you, Mr. Leary. I am very glad to
19 hear you speak about what you see for yourself in the future
20 and the changes that you want to make in your life. And the
21 most important person for you to make those promises to and for
22 is yourself. Equally important, your family. And so I'm glad
23 that you've made them to me today, but you're the one who's
24 going to have to put them in practice and live up to that, so
25 write them on your heart, write them on your forehead so you

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1 can see them when you look in the mirror, make them expressly
2 to your family every time you see them, and then live that.
3 And that's crucial. That's how you show that you're an
4 honorable man who deserves to be treated with honor and whose
5 child should look up to him.

6 Now I'm going to ask that everyone sit quietly for
7 just a few minutes while I reflect on everything I've heard and
8 make my final decision about sentencing and then I will explain
9 it and announce it. I've asked Ms. Ng to get a little DVD that
10 we have. It uses the Sesame Street characters and it's for
11 helping families help young children to understand when people
12 are away in prison and so Ms. Ng is going to come out and give
13 that to Mr. Leary's family.

14 (Pause)

15 THE COURT: Thank you for your patience. I adopt the
16 factual recitations set forth in the presentence report, but I
17 do intend to make a change in paragraph 54 to reflect my
18 finding as to gang membership. If you all would turn to page
19 13, paragraph 54, the second line ends with the words "and was
20 a close" and then the next line begins with "associate of
21 members of the Fruit Town Brims and the 9-3 sets." I am
22 directing probation to change that to "was a member of the
23 Fruit Town Brims and the 9-3 sets of the Bloods," so I'm
24 deleting the words "close associate of" and changing "members"
25 to "member" singular.

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1 Is that consistent with the government's proffer?

2 MS. GERACI: Your Honor, our belief is that he's not a
3 member of the Fruit Town Brims, but rather just a member of the
4 9-3 set. He may also be an associate of the Fruit Town Brims,
5 but for certain he's a member of the 9-3, so perhaps your Honor
6 could make that change.

7 THE COURT: Thank you for clarifying that.

8 MS. GERACI: Thank you, Judge.

9 THE COURT: And so it will read "was a member of the
10 9-3 set of the Bloods."

11 This Court has discretion, taking into account the
12 applicable statutory provisions in exercising its power under
13 Section 3553(a) of Title 18, to determine the particular
14 sentence to be imposed in each particular case. That law
15 requires the Court to consider a number of specific factors and
16 sentencing goals, including the nature and circumstances of the
17 offense; the defendant's history and characteristics; the need
18 for the sentence imposed to reflect the seriousness of the
19 offense, promote respect for the law, and provide just
20 punishment, deterrence, protection of the public; and the
21 provision of needed educational and vocational training in the
22 most effective manner. The Court also has to consider the
23 types of sentences that are available, the applicable
24 provisions of the Sentencing Guidelines, and the need to avoid
25 unwarranted sentencing disparities among defendants with

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1 similar records who have been found guilty of similar conduct.

2 This Court is required to impose a sentence that is
3 sufficient, but not greater than necessary, to comply with the
4 statutory sentencing purposes. As to the Sentencing
5 Guidelines, I conclude that the applicable guideline offense
6 level is 29 and that the applicable criminal history category
7 is II, for the reasons that are detailed in the presentence
8 report. Accordingly, the advisory guideline range for a
9 custodial sentence is from 97 to 121 months, and I've used the
10 November 1, 2015, edition of the Sentencing Guidelines manual
11 in making these determinations.

12 I have considered whether there are any factual
13 circumstances here warranting a departure within the guidelines
14 system from that guideline range, and I find that no departure
15 is warranted.

16 I have gone on to consider all of the statutory
17 sentencing factors and goals and all of the facts that have
18 been put before me in light of those factors and goals. I will
19 speak to certain of the factors specifically now.

20 As to the nature and circumstances of the offense,
21 Mr. Leary was a street-level dealer in a large drug conspiracy.
22 He is being held personally accountable here for the
23 distribution of between 700 grams and 1 kilogram of heroin, a
24 very significant amount of a very dangerous drug. In selling
25 these drugs, he played a role in a much larger system of drug

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1 distribution that put dangerous drugs into already challenged
2 communities and furthered the operations of one of the most
3 dangerous gangs in Paterson, New Jersey, and he was a member of
4 that gang.

5 During the commission of this offense, he carried
6 firearms and he was involved in a dispute with a rival gang in
7 which he shot another individual. The criminal conduct here is
8 very serious.

9 As to Mr. Leary's history and characteristics, his
10 mother was a teenager when he was born. His father was an
11 inconsistent presence in his life, and his father was
12 frequently in and out of prison. It appears that the first
13 significant time that he was able to spend with his father was
14 when he himself went to prison.

15 While his mother was finishing high school, he was
16 cared for by his grandmother, who committed herself to do her
17 best to keep him out of the gang activity and violence that
18 plagued the streets of Paterson, and he performed well in high
19 school during that period. After he finished the ninth grade,
20 he and his mother moved away, and he didn't have the
21 stabilizing influence of his grandmother. He joined in with
22 the wrong crowd, and specifically it appears that he became
23 involved in violent gang activity.

24 At the age of 17, in 2010, he was charged with acting
25 together with another person to commit a murder, and the family

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1 members of the person who was killed are here today, and the
2 letter that I received today speaks volumes of the pain that
3 they suffered then and continue to suffer by reason of the loss
4 of their family member.

5 Mr. Leary also faced charges of possessing a defaced
6 firearm. He was held in custody at a correctional facility in
7 Newark, and seven of his male family members were there also.
8 At that time, he acknowledged in writing that he was a member
9 of the gang. It's clear that he didn't have strong male role
10 models growing up. He is responsible for his decisions and I
11 hear and understand today that he is taking responsibility for
12 those decisions. He has pleaded guilty to aggravated
13 manslaughter in connection with the 2010 incident and also to a
14 2013 charge of defacing a firearm, specifically, a Glock pistol
15 that he possessed unlawfully and that was loaded with
16 hollow-point bullets, again, a very dangerous, very, very
17 dangerous situation.

18 When he got out on bail, he tried to reenroll in high
19 school. Unfortunately, he wasn't able to do that because of
20 his age. He again showed initiative in trying to equip himself
21 to live differently by enrolling in a community development
22 corporation, Youth Build Program, but because of the pending
23 state charges, he was asked to withdraw. His girlfriend was
24 pregnant. He didn't have any money. He didn't have a high
25 school diploma. He didn't have marketable skills. He turned

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1 back to the streets of Paterson, again, a decision that he made
2 under very, very challenging circumstances. And, frankly, one
3 of the tragic things about our society, the way it is, is that
4 people who are in the weakest position to make good decisions
5 are required and expected to show strength that we don't always
6 challenge people in the middle class to show. But nonetheless,
7 in order to protect our communities, in order to make sure that
8 we aren't all living in anarchy, we do demand that of everybody
9 in society, even the people who are in the hardest position to
10 make the good decisions. And that is why it is important that
11 I recognize that this was a decision that Mr. Leary made, and
12 it's also very important that he recognizes it and that he has
13 the capacity going forward to be making decisions for himself,
14 that he has the challenge of making good decision, even when
15 they're hard.

16 He went back into the local gang culture of drug
17 dealing and violence, and eventually he was arrested in
18 connection with this offense on which we are here today. He
19 also has a history of substance abuse. He started consuming
20 alcohol at 19, and at 20, he started smoking marijuana and
21 using mollys, and the probation department recommends that I
22 find, and I have made this finding by adopting the
23 recommendation, that he poses a high risk for future substance
24 abuse.

25 Mr. Leary has a serious and violent criminal history

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1 that is understated to a degree by the criminal history section
2 of the presentence report. I note that he was arrested for
3 this offense while he was out on bail for the homicide and
4 firearms offenses. I also note, however, that he's been
5 getting regular visits from his family, from his grandmother,
6 his mother, his girlfriend, and his daughter. And he has said
7 in his letter, and he said here in court today and his lawyer
8 said for him, that their influence has inspired him to want to
9 turn his life around and to take steps to begin to turn his
10 life around, and that is a very good thing. And his family
11 members who had opportunities to be with him under different
12 circumstances tell me that in that context he is respectful and
13 caring and family oriented. These are good things as well.

14 Mr. Leary clearly has a strong, supportive family
15 network that is ready to embrace him and wishes to help him
16 when he is released from custody. And in his own letter to the
17 Court and his statements here today, he has expressed what I
18 believe is sincere remorse, and he has specifically accepted
19 responsibility for his actions.

20 It is noteworthy and commendable that he has been
21 proactive in trying to put himself in a position to get his
22 GED, making those efforts even though there isn't a specific
23 program for it, that he wants to go to college, that he has
24 visions of a career for himself. It is important that he's
25 been working while he's been detained, because people aren't

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1 required to do that. And he's also earned certificates at the
2 MDC. Those are good things, and I take them into account in
3 making my decision.

4 Mr. Leary's submission to the Court and statements
5 here today indicate that he understands that it's necessary to
6 leave behind the dangerous conduct and bad decision-making in
7 his past and that he wants to make a better life for himself
8 and his family in the future. His past conduct, particularly
9 his history of falling into violent criminal activity when his
10 legitimate desires have been frustrated, indicates, however, a
11 significant need for a period of custody with rehabilitative
12 training in order to protect the public, to cement the
13 deterrent effect of this prosecution, and to promote respect
14 for the law, as well as to punish Mr. Leary for his very
15 serious criminal activity.

16 The sentencing considerations of public protection and
17 promotion of respect for the law also require that the very
18 challenged community of Paterson, New Jersey, have a breathing
19 space in which it can take steps to address its drug and youth
20 violence issues in an atmosphere of reduced violence and drug
21 trafficking, and the need to avoid unwarranted disparities also
22 counsels in favor of a substantial custodial sentence.

23 I find that the advisory guideline range includes a
24 sentence that is reasonable within the meaning of the law,
25 appropriate, and no greater than necessary to satisfy the

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1 statutory purposes of sentencing. I acknowledge and I will
2 take into account in imposing the sentence the concerns that
3 underlie the government's recommendation for a sentence at the
4 high end of the guideline range. I will now state the sentence
5 that I intend to impose.

6 Mr. Leary, would you and your attorneys please stand.

7 Mr. Leary, it is the judgment of this Court that you
8 are to serve 109 months of imprisonment -- that is 109 --
9 followed by five years of supervised release. The standard
10 conditions of supervision 1 through 15, as detailed in the
11 Sentencing Guidelines manual, will apply. You will be subject
12 to the following mandatory conditions:

13 You must not commit another federal, state, or local
14 crime. You must not illegally possess a controlled substance.
15 You must not possess a firearm or destructive device.

16 I will suspend the normal mandatory drug-testing
17 condition because I will include the recommended special
18 condition requiring drug treatment and testing. You must
19 cooperate in the collection of DNA, as directed by the
20 authorities. You must also meet the following special
21 conditions:

22 You must submit your person, your residence, your
23 place of business, your vehicle, and any other property,
24 computers, electronic communications, data storage devices,
25 and/or other media under your control, to a search on the basis

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1 that the probation officer has a reasonable suspicion that
2 contraband or evidence of a violation of the conditions of
3 release may be found. Any search must be conducted at a
4 reasonable time and in a reasonable manner. Failing to submit
5 to a search may be grounds for revocation of supervised
6 release. You must inform any other residents that the premises
7 may be subject to search pursuant to this condition.

8 You must participate in an outpatient treatment
9 program approved by the United States Probation Office. The
10 program may include testing to determine whether you have
11 reverted to the use of drugs or alcohol. You'll be required to
12 contribute to the costs of the services rendered as a
13 co-payment in an amount determined by the probation officer,
14 based on your ability to pay or the availability of third-party
15 payment.

16 I authorize the release of available drug treatment
17 evaluations and reports to the substance abuse treatment
18 provider, as directed by the probation officer.

19 You must engage in educational and job development
20 training programs, as directed by the probation officer.

21 And you must report to the nearest probation office
22 within 72 hours of release from custody. You will be
23 supervised by your district of residence.

24 In light of your financial circumstances, I will not
25 impose a fine on you. I will order that you pay to the United

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1 States the mandatory special assessment of \$100. This is
2 payable in quarterly installments of \$25 through the Bureau of
3 Prisons inmate financial responsibility program. You must
4 inform the probation department of any change in your financial
5 circumstances and notify the United States Attorney for this
6 district within 30 days of any change in mailing or residence
7 address that occurs while any portion of the special assessment
8 remains unpaid.

9 I intend to recommend to the Bureau of Prisons that
10 Mr. Leary be given an opportunity to participate in the
11 residential drug abuse treatment program, or the RDAP, and
12 that, as Mr. Leary may know, is an intensive program toward the
13 end of your term that gives you intensive substance abuse
14 avoidance treatment and also job skills training. If you
15 complete that successfully, you can earn additional time off
16 your sentence so that you don't have to serve the entire
17 sentence. This is another incentive for you to keep those
18 promises that we were talking about earlier, because the Bureau
19 of Prisons takes into account your history in the facility,
20 your behavior, in deciding whether to let you do this program.
21 So it's another thing you can do for yourself. Keep a clean
22 record and make sure that you can be eligible for this program,
23 because it will help you get out faster and help you after you
24 are out.

25 I will also recommend that the Bureau of Prisons

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1 afford Mr. Leary an opportunity to participate in educational
2 and vocational training programs.

3 Are there additional recommendations that defense
4 counsel would ask me to make?

5 MR. BELL: Just as to his designation, Judge.

6 THE COURT: Yes.

7 MR. BELL: We were considering whether the Court,
8 nearest location, of course, either to Fairton, Schuylkill, or
9 Fort Dix in New Jersey.

10 THE COURT: How do you spell the middle one;
11 Schuylkill did you say?

12 MR. BELL: Maybe it's Schuylkill.

13 THE COURT: Schuylkill, the one in Pennsylvania?

14 MR. BELL: Yes, Judge.

15 THE COURT: I will make that recommendation, that he
16 be designated to one of those facilities or another suitable
17 facility in the New York-metropolitan area in order to
18 facilitate his family ties, to enable his family to keep up
19 with him, because that is so important.

20 MR. BELL: Thank you.

21 THE COURT: Counsel, do you know of any legal reason
22 why the sentence should not be imposed as stated?

23 MR. BELL: No, your Honor.

24 MS. GERACI: No, your Honor.

25 THE COURT: The sentence as stated is imposed.

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1 I must say something important to you about appeal
2 rights. To the extent you have not given up your right to
3 appeal from your guilty plea, you have the right to appeal this
4 sentence. If you are unable to pay the cost of an appeal, you
5 may apply for leave to appeal *in forma pauperis*. At your
6 request, the clerk of the court will file a notice of appeal
7 for you. Any notice of appeal must be filed within 14 days of
8 the judgment of conviction, so make sure that you speak to your
9 attorneys about this today, because the deadline is short.

10 Ms. Geraci, are there remaining counts or underlying
11 indictments that need to be addressed?

12 MS. GERACI: Yes, your Honor. At this time, the
13 government moves to dismiss the underlying indictments with
14 respect to Mr. Leary.

15 THE COURT: That motion is granted.

16 Mr. Leary, the crime you committed was very serious.
17 The length of the sentence that you've received today reflects
18 that, and as we've discussed, a whole lot of bad choices have
19 brought us to this day. And so I urge you to think now and
20 every day for the rest of your life about the possible
21 consequences of your actions, for yourself, for your community,
22 for other people, before you take them so that the decisions
23 that you make from now on and for the rest of your life will be
24 ones that are healthier and better and safe and honorable ones
25 and ones that you would want your daughter to emulate.

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1 Your past choices brought you this justifiably long
2 sentence, but your expression of your determination to turn
3 your life around and provide a good example for your daughter
4 and your family's strong support of you have persuaded me to
5 give you a sentence that is somewhat shorter than the sentence
6 I would have given you under other circumstances, given all the
7 things that have happened in the past. I have also given you a
8 longer supervised release term than the probation department
9 recommended. I did that in order to make sure that you have
10 both the opportunity and the obligation to change your way of
11 life for good. And I mean that in both senses of the term, for
12 good meaning you're not going to turn back, and also that your
13 contribution to society and the rest of your life should be
14 good.

15 You are young, and you have a long life ahead of you,
16 and you have a strongly supportive family, your mother, your
17 grandmother, your partner, and you have a daughter, and they
18 all want to help you during this time while you're in custody
19 and when you transition back to life within your community on
20 your release from prison. You're going to have the
21 opportunity, even while you're in prison, to show your family
22 and to show me that you can keep these promises that you've
23 made here today. Make choices and take steps every day to
24 ensure that the rest of your life will be one of freedom and of
25 positive contributions to your family and to the community.

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1 This longer term of supervised release also gives you
2 extended support and access to services in reestablishing your
3 life. And if you do well in the first few years of the
4 supervised release, probation may support you in applying to
5 have the supervised release terminated earlier. It is always
6 an occasion of joy when I'm able to do that.

7 I want to put it one other way. I urge and challenge
8 you now, if you haven't done so already, to promise yourself
9 and promise your family that you'll never again do anything
10 that could even put you at risk of going back to prison or
11 serving further time than I've imposed on you today and than is
12 expected in this Jersey sentence. Your freedom is too valuable
13 for you to do anything other than that, and I hope your family
14 is precious enough to you that you will do that for them and be
15 the kind of father of whom your daughter and the rest of your
16 family can always be proud. Be an encouragement and a good
17 example to her and your family while you're in prison, because
18 I know they've been working hard already to be encouraging to
19 you. They're going to continue to work hard to be encouraging
20 to you, and this is something that you can do for them and that
21 you should do for them, and I wish you and your family strength
22 and courage during this time.

23 When you're released from your term of custody, you'll
24 have the guidance and support of the probation department in
25 reestablishing your day-to-day life while you're on supervised

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1 release. The people in probation really are committed to
2 helping you succeed, and they have knowledge and resources that
3 can be helpful to you. They've been down this road with a lot
4 of people and they've looked into what's helpful and they have
5 connections to programs. It's not easy to live under
6 supervision, but it's required because this is a court order,
7 and it's something that will help you to build your life. So
8 please take the obligation in that spirit. The people in
9 probation really are committed to helping you succeed in
10 turning around.

11 I have to also caution you that you just flat have to
12 comply strictly with all of the conditions that I set for your
13 supervised release. If you're brought back before me for
14 violating any of those conditions, I may send you right back to
15 prison, so please don't ever put me in a position of having to
16 make that decision. Thank you all for listening. I know that
17 you can succeed and so I hope that I never see you again
18 because if I don't see you again, that means that you're
19 succeeding.

20 I will direct that counsel be provided with an amended
21 copy of the presentence report reflecting the correction that I
22 ordered today, and that a complete, corrected copy be prepared
23 for the Bureau of Prisons and the Sentencing Commission. All
24 other copies of the report must remain appropriately
25 confidential. If an appeal is taken, counsel on appeal are to

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1 be permitted access to the report, and I thank counsel for
2 their advocacy and their candor with the Court here today.
3 Again, thank you all for being here. I would ask that the
4 marshals permit Mr. Leary to acknowledge his family members
5 when we adjourn as he is leaving the courtroom.

6 Counsel, is there anything else that we should take up
7 together today?

8 MS. GERACI: No, your Honor. Thank you.

9 MR. BELL: Nothing further, Judge.

10 THE COURT: Nothing further for me, counsel?

11 MS. LONDON: No. Thank you, your Honor.

12 THE COURT: Thank you.

13 MR. BELL: Thank you for your time.

14 THE COURT: Keep well, everyone. We're adjourned.

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